

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
Crop Production Services, Inc.)
Thomas Warner)
Debra Warner)
Alan Steele)
Nancy Steele)
Denny Horstman)
Duane Mol)

MUR 5765

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

- 1.
- 2.
- 3. Take no further action and close the file as to Nancy Steele and Debra Warner.

II. BACKGROUND

This matter originated with a *sua sponte* submission filed by Crop Production Services, Inc., ("CPS"), an agricultural products company based in Galesburg, Illinois, regarding its use of corporate funds to reimburse the contributions of six individuals totaling \$43,305. These six individuals included a CPS vice president, Thomas Warner, his spouse, three CPS managers and one of their spouses. CPS reimbursed these individuals for their contributions to the Agricultural Retailers Association Political Action Committee ("ARA-PAC") in the form of purchases at three ARA-PAC auctions, in 2001, 2002 and 2003. Thomas Warner approved the CPS reimbursements and, along with the other five respondent contributors, appeared to have knowingly permitted his own name to be used to effect contributions in the name of another. On this basis, the Commission found reason to believe that CPS and Thomas Warner each violated

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1 2 U.S.C. §§ 441b(a) and 441f and that Alan Steele, Denny Horstman, Duane Mol, Debra Warner
2 and Nancy Steele each violated 2 U.S.C. § 441f. See the First General Counsel's Report ("First
3 GCR").¹

4 **III. RESULTS OF INVESTIGATION**

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A. The contributions

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Thomas Warner and Alan Steele painted a picture of the contributions consistent with the
sua sponte submission's description of the contributions as intended for the benefit of CPS, which

¹ Respondents filed a combined response to the Commission's reason to believe findings. Attachment 1. In their filing, Respondents wish to correct an error found in CPS's *sua sponte* submission and reflected in the Commission's Factual and Legal Analysis ("FLA") addressed to CPS, regarding one of the steps taken by CPS and its parent company after the violations were discovered. See Attachment 1 at 1-2 CPS's FLA at page 6, lines 17-18, states that the CEO of CPS's parent company spoke with Thomas Warner regarding what Mr Warner had done. According to respondents, that statement is incorrect, it should read that the CEO of CPS's parent company spoke with Richard Gearheard, CEO of CPS

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1 received the items purchased at the auctions for use in its business. Messrs.
2 Warner and Steele described an environment where vendors (equipment and supply companies that
3 were members of the ARA), who had donated items for the auction, encouraged Messrs. Warner
4 and Steele to bid on their products in the hope that CPS would begin, or increase, its business
5 relationship with the vendors.² Alan Steele, Denny Horstman and Duane Mol each bid on items in
6 their area of CPS's business.³

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11 **B. Respondents' knowledge of the facts and of campaign finance law**

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15 According to Messrs. Warner and Steele, they were
16 not aware of campaign finance laws and had no experience with political campaigns or
17 contributions. Further, these two individuals as well as the other four reimbursed contributors each
18 filed a sworn affidavit in response to the Commission's reason to believe findings stating that they

² Mr Warner noted that CPS employees did not make bids at ARA-PAC auctions prior to 2001 because those earlier auctions did not offer items that were useful for CPS's business

³ For example, Denny Horstman, CPS's seed manager, bid on Monsanto seeds

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1 did not, at the time, realize that their actions might constitute unlawful corporate contributions.⁴

2 See Attachment 1 at 8-13. The overall evidence in this matter does not indicate otherwise.

3 C. **Thomas Warner's contributions reimbursed through Alan Steele**

4 The *sua sponte* materials provided by CPS indicated that CPS issued its reimbursements to
5 Thomas Warner through Alan Steele.

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D. CPS officers other than Thomas Warner

The Commission found reason to believe that CPS vice president Thomas Warner violated 2 U.S.C. § 441b(a) by consenting to CPS's corporate contributions. The issue arises whether any other CPS officers were aware of or approved of CPS's reimbursements of the contributions. The investigation in this matter, however, has not indicated any awareness on the part of any other CPS officers. Thomas Warner specifically denied that any other officers were aware of the reimbursements, noting that there was never a need to raise the issue of reimbursement with his superiors, as he himself had signature authority for expenditures up to \$250,000. Finally, none of the available documentation indicates any communication with other CPS officers regarding the reimbursements prior to September 2005 when the violations came to light.

1 **E. ARA-PAC knowledge of the reimbursements**

2 As for ARA-PAC, the evidence in this matter,

3 does not indicate that ARA-PAC was aware that the CPS employees had
4 their contributions reimbursed, prior to September 2005 when notified by CPS of the
5 reimbursements. Although Thomas Warner was ARA Chairman during 2003, Messrs. Warner and
6 Eberspacher both described Mr. Warner's position as limited, largely ceremonial and with no role
7 in fundraising. This is consistent with the documents provided by ARA-PAC during our
8 investigation: Mr. Warner appears only in the ARA's 2003 Conference and Exposition materials
9 with a general "Chairman's Welcome" statement that makes no mention of the auction or any other
10 fundraising issue.¹⁰

11 We also inquired of Mr. Eberspacher whether the very nature of the auction items bid on
12 by CPS employees, big-ticket farm equipment and supplies, might suggest corporate rather than
13 personal use by the bidder, thereby raising an issue of possible corporate reimbursement. Mr.
14 Eberspacher rejected that reasoning, asserting instead that such auction items were in common
15 use by persons like the CPS employees on family farms or in side businesses. He further noted
16 that he knew that an executive such as Thomas Warner was well-compensated and could afford
17 \$10,000 contributions.

18 In addition, the ARA took certain steps to inform donors and potential donors that their
19 personal contributions could not be reimbursed, although the investigation has not shown that

¹⁰ Mr Warner is also cc'd on a letter dated August 1, 2003, from Jack Eberspacher to Mr J Muse at Agrium, CPS's parent company, inviting Mr Muse to attend ARA's 2003 Conference and Exposition. The letter's only reference to fundraising is to note the ARA's "product donation" program whereby member companies donate products for use in the auction to raise funds for the PAC to use to support helpful legislators

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1 respondents were aware of the information provided by the ARA.¹¹ For example, as early as 2002,
2 ARA-PAC's thank-you letters to contributors who had won bids at the auction but had not yet
3 paid, expressly stated "federal law prohibits you from receiving reimbursements from a
4 corporation." Although Tom Warner wrote a contribution check accepted by ARA-PAC relating
5 to the 2002 auction, the evidence shows that Mr. Warner had already paid by the time such letters
6 were sent by the PAC and that he received a shorter thank-you letter that did not include the
7 prohibition.¹² Since September 2005, the ARA has increased its efforts at encouraging
8 compliance, providing to its members full-page advisories titled "Rules of the Road for
9 Contributions to ARAPAC" that set forth the prohibition on the reimbursement by any person of
10 contributions to the PAC, the \$5,000 annual contribution limit, and other provisions. *See* 2 U.S.C.
11 §§ 441f and 441a(a)(1)(C).

12 **IV. PROPOSED ACTION**

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¹¹ Upon notification by CPS in September 2005, ARA-PAC refunded the contributions well within the 30-day window set forth in 11 C.F.R. § 103.3(b)(2). *See* First GCR at 13.

¹² *See also* footnote 4, *supra*, regarding an advisory provided by the ARA in connection with the 2003 auction

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7 **B. Nancy Steele and Debra Warner**
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9 The investigation, including the documentation provided by ARA-PAC, confirms Nancy
10 Steele's limited role in the reimbursement scheme. See First GCR at 10, fn 17. Specifically, Ms.
11 Steele is the lone respondent contributor in this matter who did not participate in any ARA-PAC
12 auction. Her only involvement is her status as a contributor of \$4,600 to ARA-PAC made along
13 with Alan Steele's \$5,000 contribution via a single \$9,600 check (imprinted with both their
14 names) signed by Alan Steele.¹⁵ The reimbursement by CPS for these contributions was in the
15 form of a check made payable to Alan Steele. Mr. Steele stated that Nancy Steele had nothing to
16 do with the contribution. Therefore, we recommend that the Commission exercise its
17 prosecutorial discretion and take no further action and close the file regarding Nancy Steele.

18 Debra Warner, while more involved in the activity than Nancy Steele, similarly does not
19 warrant further pursuit in this matter. Ms. Warner placed winning bids at the 2003 auction

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¹⁵ As noted in footnote 6, ARA-PAC treasurer Jack Eberspacher stated that the PAC routinely asked for reattribution of contributions to spouses in this situation where the contribution exceeded the \$5,000 contribution limit. See 2 U S C § 441a(a)(1)(C)

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1 totaling \$555 for a floral arrangement and retirement cufflinks, for which she was paid by CPS.¹⁶
2 Thomas Warner paid for Ms. Warner's bids, by including the \$555 in his \$7,805 contribution to
3 ARA-PAC on December 23, 2003. The PAC refunded Mr. Warner's contribution as excessive
4 for the year 2003, and he wrote a new check for \$7,805 dated January 26, 2004. ARA-PAC
5 disclosed part of this amount, \$2,805, as a contribution from Debra Warner on February 4,
6 2004.¹⁷ Her role, however, was limited to receiving the \$555 payment from CPS. Finally,
7 Ms. Warner also was the reported contributor of \$5,550 to ARA-PAC on January 10, 2003, in
8 circumstances similar to those of Nancy Steele's contribution, i.e., the check was not signed by
9 Debra Warner and Thomas Warner stated that she was not involved in the contribution.

10 In view of Debra Warner's limited involvement in this matter, and in order to focus the
11 resolution of this matter on the individuals who were central to the activity, we recommend that
12 the Commission exercise its prosecutorial discretion and take no further action and close the file
13 as to Debra Warner.

14 **V. RECOMMENDATIONS**

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21 3. Take no further action and close the file as to Nancy Steele and Debra Warner.

¹⁶ The check containing the reimbursement exceeded the amount of the reimbursement Debra Warner performed part-time cleaning work at CPS, according to Thomas Warner

¹⁷ Mr Warner stated that ARA-PAC asked him to write a new check in January 2004, and he did so. The PAC did not disclose the receipt of any contribution from Thomas Warner related to this second \$7,805 contribution. See First GCR at 12, fn 19. ARA-PAC provided documents indicating that the \$2,805 excessive portion was attributed to Debra Warner and that Mr Warner was offered an opportunity to received a refund, consistent with 11 C F R § 110.1(k)(3)(ii)(B). The \$7,805 contribution checks were each imprinted with the names of both Thomas and Debra Warner. The ARA retained the remaining \$5,000 portion of Mr Warner's contribution in its administrative account.

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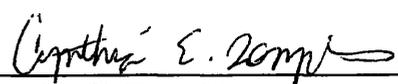
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4. Approve the appropriate letter.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Date: 12/8/06

BY: 
Cynthia E. Tompkins
Assistant General Counsel


Mark Allen
Attorney

Attachments:

1. Response to Reason to Believe findings
- 2.